

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

"This ruling is applicable to the taxpayer named herein. It must not be used as a precedent by Internal Revenue Service personnel in the disposition of other cases."

Date:

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Dear Applicant:

DIST. DIR. OF INT. REVENUE SER.
E. O. [redacted]

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [redacted], under the nonprofit laws of the State of [redacted] to help in the revitalization plans for the downtown area of [redacted]. You have indicated that this is a blighted, deteriorated area of the city, in need of much assistance.

You have listed your specific purposes as the following: (1) to plan, coordinate, and/or participate in development of various public interest real estate projects in the downtown area; (2) to maintain, improve, or beautify parks, streets, walkways, sewer, public buildings, or vacant undeveloped areas; (3) to promote, foster, encourage, and sponsor discussion groups and correct abuses to areas of common interest within the community; (4) combat community deterioration; (5) educate and inform citizens on topics of interest and concern to the community; and (6) promote constructive relationships between local bodies and private businesses and citizens.

In one flyer you provided, you list the following services you will provide: (1) free architectural consultation for building rehabilitations including facade improvements, signs, and building maintenance; (2) free contractor location and referral service; (3) information of tax credits available for building rehabilitations; (4) free consultation on advertising and ad layout; (5) free consultation on promotional activities for small businesses; (6) information on organizing festivals and events; (7) information on running a small business including new business locations, store mix, inventory expansion, and window display; (8) demographic and retail sales statistics for [redacted]; (9) information on methods of financing for facade improvements; and (10) assistance and/or information on any item concerning the revitalization of downtown.

[redacted], an organization recognized exempt under section 501(c)(3), launched

the [redacted] program in [redacted] to help smaller communities. In [redacted], [redacted] also exempt under section 501(c)(3), started its [redacted] program. [redacted] was accepted into the program in [redacted].

The [redacted] program revitalizes downtown buildings to house new economic functions and to become the basis for marketing a more distinctive image of the downtown to shoppers, residents, investors, and visitors.

Section 501(c)(3) of the Internal Revenue Code provides for recognition of exemption from Federal income tax of organizations which are organized and operated exclusively for, among other things, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's organizing document, or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

The Supreme Court held in Better Business Bureau v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) of the Code.

Rev. Rul. 76-408, 1976-2 C.B. 145, held that an organization that provided interest-free home repair loans in a badly deteriorated urban residential area to low income homeowners who are unable to obtain loans elsewhere was exempt under section 501(c)(3).

Rev. Rul. 74-587, 1974-2 C.B. 162, held exempt an organization that was providing financial assistance to business enterprises in economically depressed areas through low-cost or long-term loans, or through the purchase of equity interests in the businesses being assisted.

Rev. Rul. 76-419, 1976-2 C.B. 146, exempted an organization that utilized favorable lease terms as an inducement for business enterprises to locate in industrial parks in an economically depressed area, which would result in the hiring and training of the underemployed and unemployed in the area. (Note that Rev. Rul. 81-284, 1981-2 C.B. 130 amplified Rev. Rul. 74-587.)

Rev. Rul. 77-111, 1977-1 C.B. 144, involved two organizations. The first was formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations. The second organization's purpose was to revive retail sales in an area of economic decline by constructing a shopping center that would complement the area's existing retail facilities. Neither organization was held to be exempt, because neither organization targeted minority-owned businesses. The organizations both operated in a depressed area, but neither limited their benefits to needy individuals or businesses.

Rev. Rul. 75-470, 1975-2 C.B. 207, held that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical significance or architectural significance and to open the structures for viewing by the general public qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 86-49, 1986-1 C.B. 243, held that an organization formed for the purpose of preserving the historic or architectural character of a community through the acquisition and occasional restoration of historically or architecturally significant properties, and subsequent disposition of these properties subject to restrictive covenants qualifies for exemption under section 501(c)(3) of the Code.

Your creating document does not dedicate your assets to an exempt purpose. You therefore fail the organizational test of section 1.501(c)(3)-1(b)(1) of the regulations.

Similar to the two organizations described in Rev. Rul. 77-111, above, you operate in a depressed area, but you do not limit your programs to needy individuals or businesses. This "dual target" approach is evident in our published precedents. For example, in Rev. Rul. 74-587, above, the organization not only targeted its programs to high density urban areas inhabited by mainly low-income groups, it also restricted eligibility for its programs to those businesses that could not otherwise obtain funds through conventional commercial sources because of the financial risks, or because of being a member of a minority or other disadvantaged group. Similarly, in Rev. Rul. 76-419, above, the organization not only located its industrial parks in a blighted area, it also gave preference to prospective tenants with hiring policies conforming to current fair employment legislation, and which agreed to hire a significant number of presently unemployed persons in the area and to train them in needed skills. Also, in Rev. Rul. 76-408, above, the organization not only provided the interest-free home repair loans in a badly deteriorated urban residential area, it also limited these loans to low income homeowners who are unable to obtain loans elsewhere. On the basis of these rulings, we conclude that your organization does not combat community deterioration, within the meaning of section 501(c)(3) of the Code.

Though you have indicated that you are part of the national [REDACTED] program, you have provided no evidence that any of the buildings that you are helping to revitalize are listed on "the National Register." Nor have you provided any evidence that any of these buildings have either historical or architectural significance. Rev. Rul. 75-470, above, and Rev. Rul. 86-49, above, both limit exemption to organizations preserving buildings with historical or architectural significance. On the basis of these rulings, we conclude that your organization is not organized or operated for historic preservation purposes, within the meaning of section 501(c)(3) of the Code.

Your revitalization program is primarily designed to benefit the downtown businesses and this is not an exempt activity. Therefore, according to section 1.501(c)(3)-1(c)(1) of the regulations, you cannot be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. This nonexempt purpose is sufficient in degree to preclude you from qualifying for tax exemption under the rationale of Better Business Bureau v. United States.

Furthermore, while your downtown revitalization program does have some broad public benefit, it also results in direct and substantial private benefit to the downtown businesses within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Because you fail to meet the organizational and operational tests described in the regulations, you are not exempt from income tax under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 of the Code. You must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director in Atlanta, Georgia. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Attn: [REDACTED], [REDACTED]
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224.

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If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,


Chief, Exempt Organizations
Rulings Branch 2

cc: DD, Atlanta
Attn: EO Group